IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 462 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KUNDANBALA MOHANLAL BUDHDEV and 2 Ors. .. Appellants

Versus

HARIJAN MANGA DANABHAI and 2 Ors. .. Respondents

Appearance:

MR BR SHAH for the appellants
NOTICE SERVED on Respondent No. 1, 5
MR MD PANDYA for Respondent No. 2
MR PV NANAVATI for Respondent No. 4

CORAM : MR.JUSTICE H.R.SHELAT
and
MR.JUSTICE H.H.MEHTA

Date of decision: 08/03/2000

ORAL JUDGEMENT

(per H.R.Shelat, J)

#. On 18-7-1978 around mid-night on Gondal-Rajkot National Highway, near Vageshwar Temple, in a motor accident, Mohanlal Prabhudas Buddhadev who was travelling by the bus bearing No. GRS 7365 suffered injuries and succumbed to the same. The appellants who are the heirs and representatives of Mohanlal Prabhudas Buddhadev therefore filed Motor Accident Claim Petition No. 234 of 1978, wherein the then learned Chairman of the Motor Accident Claim Tribunal (Main) Rajkot on 24-4-1981 passed an award directing all the respondents to pay Rs.32,600/jointly and severally together with interest thereon @ 6% per annum and costs of the petition.

#. Being dissatisfied with the award passed, the appellants who are the original claimants have preferred this appeal confining to the issues qua quantum, 8 multiplier.

#. It is not necessary to state the facts in details having regards to the points raised. Necessary facts qua the points raised are stated hereinabove. However, it may be stated in short that the appellants in the Claim Petition claimed the compensation of Rs.1,50,000/-, but the Tribunal awarded Rs.32600/- only. As the claim in full is not allowed, this appeal is filed for the claim disallowed by the Tribunal.

#. At the time of hearing the learned advocate for the appellant firstly makes it clear that he is restricting the claim to Rs.75,000/- in this appeal. Assailing the approach of the Tribunal for the purpose of fixing the quantum he now proceeds to contend that the Tribunal ought not to have deducted the amount of Rs.3000/- while fixing the datum figure or the amounts of dependency. It may be stated in this regard that considering the evidence on record the Tribunal found that the deceased was having a shop. After the accident the appellants sold the said shop for Rs.25,000/-. The said amounts are invested and therefrom the appellants are getting the income of Rs.250/- every month by way of interest. The Tribunal therefore found that when the appellants were getting the amount of Rs.3000/- p.a. by way of interest on the investment of Rs.25,000/- the said amount was required to be deducted for the purpose of determining the datum figure. The Tribunal, on the basis of the income tax returns of the deceased, assessed the annual income at Rs.6300/- and deducted Rs.1000/- which the deceased must be spending on himself as well as the

interest amount of Rs.3000/-, and assessed the dependency at Rs.2300/- per year. The Tribunal then multiplying the same by 12 assessed the compensation at Rs.27,600/- under the head loss of dependency. Under the head loss to the estate of the deceased the conventional amount of Rs.5000/- prevailing at the relevant time were awarded. In all therefore the Tribunal awarded Rs.32,600/-. The learned Advocate therefore assails the award qua the deduction of Rs.3000/- the amount of interest, having been made by the Tribunal.

#. We find force in the contention advanced by the learned advocate for the appellant. We are of the view that in such tortious liability cases, like from like is to be deducted and not the unlike. The amounts the victims are receiving are paid to satisfy the tortious liability that arises out of the accident. The amounts paid to satisfy the liability can be deducted, but not the amount the victims have received otherwise than under the tortious liability. The amount of interest the appellants are receiving cannot be said to be the amount they have received or they are receiving in satisfaction of the tortious liability of respondents. If the property belonging to the deceased after the accident is sold and the heirs of the deceased receiving the sale consideration invest the same somewhere and earn the interest, the same cannot be said to be the amount being paid for satisfying tortious liability. The Tribunal therefore ought not to have deducted the sum of Rs.3000/- the amount of interest the victims are receiving on the investment. The Tribunal in this case instead of deducting like from like has preferred to deduct the unlike, which in our view is not just and proper. The income of interest earned on sale consideration of shop is therefore required to be kept out of consideration while determining the amount of dependency.

#. What multiplier should be adopted is the question that now arises for our consideration. It is the contention of the learned advocate representing the appellant that instead of 12, the learned Judge of the tribunal ought to have adopted the multiplier of 15. For the reasons we prefer to state hereinbelow, the contention is required to be accepted.

#. The deceased at the time of accident was aged 38 years. If we consider the ordinary span of life to be of 70 years, the victim would have survived for 32 years more. Considering his remaining period in this case, the Tribunal ought to have adopted the multiplier of 15 rather than 12.

#. On the basis of what we have stated hereinabove, the amount of compensation is required to be assessed. So far as yearly income of the deceased is concerned, the learned Advocate for the appellant could not point out anything from the record to take a different view than what the learned Judge has taken. We entirely agree with the learned Judge of the Tribunal who has considering the evidence on record accepted Rs.6300/- to be the yearly income of the deceased. Out of that yearly income considering the life-style and the expenses the deceased had to incur, the Tribunal has rightly deducted Rs.1000/- on the ground that the deceased must have spent on himself. If the said amount is deducted from the yearly income, the amount of dependency comes to Rs.5300/- and not Rs.2300/- per year. The same are required to be multiplied by 15. If that is done, the awardable amounts under the head `loss of dependency' comes to Rs.79,500/-.

#. Over and above such amount, the appellants are also entitled to conventional amount of Rs.5000/- which was prevailing at the relevant period under the head loss to the estate of the deceased. From the place of the accident the dead body was taken to the Civil Hospital, Rajkot for postmortem and therefrom to the resident of the deceased at Rajkot. The appellants must have spent atleast Rs.500/- for the carriage of the dead body. The said amount is also required to be awarded under the head conveyance charges.

##. In all therefore, the appellants are entitled to Rs.85,000/- minus Rs.32,600/- the amount already awarded and paid to the appellants under the award of the Tribunal. The amounts required to be awarded more, come to Rs.52,400/-.

##. It is also the submission of the appellants that interest on the additional amount may be awarded @ 12% per annum against which it is the submission of learned advocate representing the respondent No.2 that interest on such amount may not be awarded because in such a case, the victim gets the amount in advance, and therefore the amount cannot be said to have been used; and the interest is ordinarily given on the amounts used by the person with whom the amounts are invested or deposited. The contention cannot be accepted in view of the statutory provision of Section 171 of the Motor Vehicles Act, 1988 (Section 110CC of the Old Act). The said provision provides that where any Claims Tribunal allows the claim for compensation, the Tribunal may direct in addition to the amount of compensation payment of simple interest at

such rate and from such date not earlier than the date of making the claim. When there is such statutory provision the claim of interest cannot be rejected on any isms or ideology or logic, or on the ground canvassed. It may be stated that no philosophy or ideology or isms or logic is recognised by Section 171 for not granting interest. That provision is made because interest is considered to be adhesive to the amount of compensation determined, and secondly the interest is paid because of the delayed payment. Immediately after the accident payment of compensation is not made, and the same is made only when the Tribunal passes the award. The party who has to make payment inclusive of Insurance Company, can be said to have earned profit or interest using the payable amounts till the award is passed and payment is made. Hence the parties using the amounts have to make the payment of interest, and cannot avoid to pay on any ground or logic.

##. As per Section 171 of the Motor Vehicles Act, 1988 the Tribunal has to, having regard to the facts and circumstances on the record, in its discretion award the interest at a particular rate, but regarding the rate of interest, no straight jacket formula is provided or can be laid down. If the claimant is not diligently proceeding and is found responsible for delaying the proceedings, interest at the lesser rate can be awarded and if the party found to be the wrongdoer has to make the payment, is found responsible for delaying the proceeding, the same can be saddled with more rate of interest. In any case, the discretion has to be exercised judiciously having regard to the facts on record and not arbitrarily; and the discretion must be in tune with the policy qua interest adopted by Government or R.B.I. or the Banks. In other words the rate of interest in no case should exceed the maximum rate of interest being paid by the Banks on F.Ds. from time to time so as to check largesse or windfall running counter to the concept of fair and reasonable compensation.

##. In the case on hand, the accident occurred on 18-7-1978 and thereafter the Tribunal passed the aforesaid award on 24-4-1981. As it was found to be on the lower side than what can be said to be fair, the appellants had to prefer this appeal. About 14 years have passed after the appeal came to be filed. There is nothing on record that appellants were not proceeding diligently and were adopting delaying tactics. In view of this fact, we think it just and proper to award interest @ 10% on the additional amount from the date of petition till realisation.

##. For the aforesaid reasons, it is clear that the learned Judge of the Tribunal fell into error in assessing the datum figure of dependency at Rs.2300/- and put himself on a wrong track which resulted into erroneous calculation, and fixation of lesser amounts of compensation, causing injustice to the appellant.

##. The appeal for the aforesaid reasons is required to be partly allowed and the same is hereby allowed accordingly. The award passed by the Tribunal is modified to the extent that the respondents Nos. 1 and 2 (Harijan Manga Danabhai and the Gujarat State Road Transport Corporation, Ahmedabad) shall pay jointly and severally the additional amount of compensation of Rs.52,400/- to the claimants together with interest thereon @ 10% per annum from the date of the application till realisation and costs thereon within a period of three months from today. It may be clarified that Rs. 52,400/- are to be paid over and above the amount of Rs.32,600/- awarded by the Tribunal. The award be drawn accordingly.